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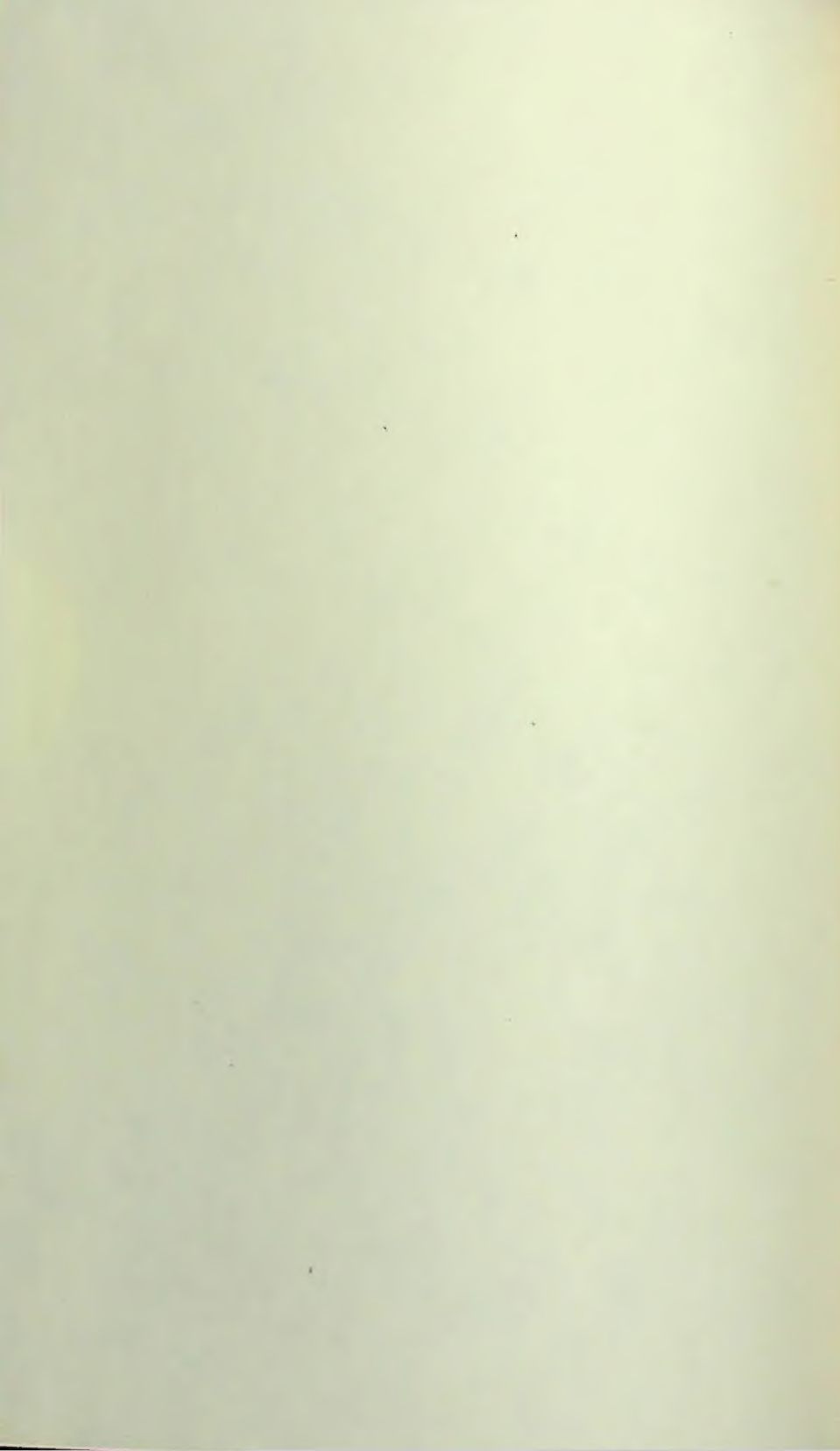


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PATENTS FOR INVENTIONS,

AND

HOW TO PROCURE THEM.

NOTES ON THE LAW AND PRACTICE RELATING TO THE GRANT OF
LETTERS PATENT FOR INVENTIONS;
COMPILED FOR THE USE OF INVENTORS, PATENTEEES AND
OTHERS INTERESTED IN THE PROTECTION
OF INDUSTRIAL PROPERTY.

BY

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PREFACE.

ONE of the avowed objects of the framers of the Patents, Designs and Trade Marks Act of 1883 was to simplify Patent Practice to such an extent as to enable inventors to procure Patents without the intervention of an Agent; and in pursuance of this object, the administration of the Act has been directed in such a manner as to encourage inventors in—or certainly not to discourage them from—conducting their business directly with the Patent Office. Speaking generally, nothing could, in the opinion of the writer, be more completely opposed to their real interests. Doubtless there are some few inventors who have mastered the technicalities of Patent Practice and who are competent to patent their own inventions; but to induce the average inventor to believe—or even to allow him to imagine—that he is competent to prepare a Patent Specification, and

that the assistance of a skilled Patent Agent is superfluous and a mere waste of money, is simply deluding him. The pit-falls into which an unwary inventor may step are sufficiently numerous without needlessly adding to them. Some inventors may be exceedingly ingenious, and remarkably well versed in the particular branch of science or manufacture to which their attention has been specially directed; but unless they possess knowledge of the kind a Patent Agent acquires by lengthened practice and by diligently studying the treatment to which Patents of various descriptions are subjected in the Courts, the probability is that, although a Patent may be obtained, legal protection for the invention will not be secured. With still greater force does this apply to inventors in the humbler grades of society, and to the imperfectly educated. How many, after congratulating themselves upon having saved a few guineas, suddenly discover that they have lost not only what money they had expended, but their inventions as well; their Specifications sufficing to publish but not to protect the latter. Far better would it have been to preserve secrecy.

From the foregoing remarks, it may be surmised that, in describing the procedure for obtaining Patents, it is not the writer's intention to encourage inventors to attempt the conduct of their own Applications; but rather to place them and others interested in Patents in possession of such information as will enable them to appreciate their true positions, and to realise, not only the extent of their privileges, but the nature of their obligations. The writer also ventures to hope that inventors, patentees, assignees and others, will find the information and explanations contained in the following pages of assistance to them, not only in considering and determining their course of action under circumstances such as ordinarily arise, but in giving their Agents or Solicitors such instructions as the occasion may demand, and in fully comprehending the details, or at any rate the nature, of any proceedings which may be deemed advisable.

Some inventors may not appreciate or even understand all the measures which their Agents may, under particular conditions, adopt as most expedient; and Agents sometimes find difficulty in getting sufficiently explicit instructions from their Clients. Many of

the difficulties which arise in consequence might be avoided were inventors as well as Patentees more generally acquainted with the provisions of the law under which they seek, or on which they rely for, protection; and if the present book assists them in acquiring such information, the object of the writer will have been attained.

191 FLEET STREET, LONDON, E.C.,
January, 1891.

PATENTS FOR INVENTIONS,

AND

HOW TO PROCURE THEM.

WHEN, in the twenty-first year of the reign of James I., the Act known as the "Statute of Monopolies" was passed, and the power of the Crown to grant exclusive privileges for the sale of commodities defined and restricted, a reservation was made in favour of "any letters patents and grants of privilege, for the term of fourteen years or under, hereafter to be made of the sole working or making of any manner of new manufacture within this realm, to the true and first inventor or inventors of such manufactures, which others, at the time of making such letters patents and grants, shall not use; so as also they be not contrary to the law, nor mischievous to the state, by raising prices of commodities at home, or hurt of trade, or generally inconvenient." Subsequent Acts defined the conditions under which grants of Letters Patent might be acquired, prominent amongst these being the filing of a Specification fully disclosing the invention; the leading principle of the bargain entered into between the inventor and the Crown being that, in consideration of his being protected in the exclusive right to the exercise of his invention for a limited term, the public should, by making use of the information contained in the Specification, be placed in a position to reap the full benefit of the invention upon the expiration of the term for which the Letters Patent might remain in force.

By keeping the foregoing clearly in view, the principles underlying the following essential requirements will be readily perceived:—The invention must be some manner of manufacture, and it must be new within the realm. The invention must be beneficial to the public; or, in other words, must possess utility. The specification must contain such a description of the invention as will enable it to be carried into full effect. Subsequent Acts and a vast number of decisions by learned judges have elaborated and explained the application of these principles under a great variety of circumstances; so that, at the present time, a thorough knowledge of Patent Law can only be gained at the cost of much patient study on the part of inventors, or of those to whom inventors may turn for advice as to the proper mode of securing for their inventions the fullest protection the law accords.

Inasmuch, however, as the writer's object is merely to direct attention to such leading features of the law and practice as all inventors should be acquainted with, the end in view will perhaps be most readily attained by describing the course of procedure followed in procuring Letters Patent for an invention; opportunity being taken, as occasion arises, to offer observations on such points as may seem to need explanation.

An application for Letters Patent may be made by the inventor; or, where two or more persons have contributed to the conception or development of the invention, by those persons jointly. Or an inventor may join with a non-inventor or with a Company in making the application; in which case the application should be made in such a form as

to indicate who is the inventor. Or a person to whom an invention is communicated from abroad may apply, the communicatee being then placed on the footing of an inventor by virtue of his being the first person to introduce the invention into the country. The communicator of the invention from abroad need not be the inventor. Or the legal representative of a deceased inventor may apply for, and become the grantee of, Letters Patent, the application being made within six months of the inventor's decease. Under no other circumstances can a non-inventor alone make a valid application, though he may have the full authority of the inventor, or an actual assignment of the invention-right. In many foreign countries an '*ayant droit*,' or person having a right to apply, either by assignment from, or mere permission of, the inventor, may apply. In the United States, although the application must be made in the name of the inventor, the Patent may issue to an assignee, or to the inventor and an assignee jointly; an arrangement which is in many respects convenient.

Having thus stated who may be a patentee, the next question for consideration is, What may be patented? The Statute of James previously referred to says "any manner of new manufacture"; but to fully explain how this definition is interpreted by the Courts, it would be necessary to refer to a great number of decisions, extending over a lengthened period. The word "manufacture" is held to mean either 'the mode of making' or 'the thing made'; so that, as a general rule, any mode of accomplishing a new and useful result, or any new and useful product,

the result of manufacture, is patentable. The process or product, as the case may be, must be useful in the sense of being more useful than that which it is intended to supersede.

In proceeding to procure Letters Patent, the application may be accompanied either by a Provisional Specification or by a Complete Specification. The former is only required to disclose the nature of the invention; whereas a Complete Specification must particularly describe and ascertain the nature of the invention, and in what manner the same is to be performed, and must end with a distinct statement of the invention claimed.

The Application and Specification, on being lodged at the Patent Office, are forthwith referred to an examiner, whose duty it is to ascertain and report to the Comptroller whether the nature of the invention is fairly described, whether the Application, Specification and Drawings (if any) have been prepared in the prescribed manner, and whether the title sufficiently indicates the subject matter of the invention. It may here be observed that the examiner is not called upon, neither is he entitled, to express any opinion as to whether the invention possesses novelty or utility, or whether it is proper subject matter for Letters Patent. The Comptroller has power to refuse an application on the ground that the exercise of the invention would be contrary to law or morality; but it is not within his discretion to reject an application upon the ground that the invention is wanting in novelty or utility, or that it is not subject matter for Letters Patent. Too much stress can scarcely be laid on this circumstance, because the mere fact of the Patent Office examiners instituting an

investigation of a certain kind leads many inventors to suppose that when their applications have been accepted by the Comptroller, they have acquired an indefeasible right to the exclusive exercise of their inventions. Practically, acceptance of an application by the Comptroller means that the Specification is written on paper of the prescribed size, and otherwise complies with formal requirements. In Germany, Patents are frequently refused for inventions, which, although presenting novelty, are not regarded as possessing sufficient importance or evincing sufficient invention to justify the grant of a German Patent. In Great Britain, however, the expediency of patenting an invention is at the sole discretion of the applicant; and if he choose to incur outlay in procuring useless or frivolous Patents, it is only his own concern. It is frequently argued that the Patent Office ought not to grant a Patent for an invention which has already been patented or published; but all the Patent Office authorities profess to do is to grant Patents to those who represent that they are in possession of new and useful inventions, and duly apply for Letters Patent with a view to securing protection for such inventions. It is for an applicant to ascertain whether his invention is in fact new and useful, and then to avail himself, if he so desire, of the means afforded for his protection.

Before applying for Letters Patent, it is advisable to institute a careful search as to the novelty of the invention. The records at the Patent Office, even if they do not reveal prior publication, may be relied upon to afford some useful information concerning inventions of a closely analogous character, the ground covered by which must not be trespassed

upon. The expense of conducting a search varies a good deal for different subjects, some involving a great deal of labour; but, under any circumstances, a moderate expenditure on this account in the first instance is recommended as judicious.

Even where a search of an elaborate description is made without disclosing anything affecting the novelty of the invention, the result can only be regarded as one of a negative character; that is to say, the searcher can only report that he has examined such and such records, and has not met with any publication describing the invention, the object of the search. He cannot, however, report affirmatively that no such publication exists. Consequently, whether a search be made or not, some degree of uncertainty as to the state of public knowledge concerning the art to which the invention relates, and doubt as to the precise scope of the Patent to which the applicant may be entitled, are almost unavoidable. If the ambit of the claim or claims be made very wide, there is danger of including something to which the inventor is not entitled to assert an exclusive right. If, on the other hand, the claim be restricted within narrow limits, a risk is incurred of rendering the Patent comparatively easy of evasion. Of these two evils, the former is the lesser; because (as will be readily understood when the provisions for the amendment of specifications come to be explained) undue wideness in the scope of a claim is a remediable fault, whilst a defect in the direction of excessive restriction is irremediable.

If the application be deemed to relate to more than one invention, the Comptroller may require the case to be either subdivided or a portion

struck out; but after the Patent is granted, its validity cannot be impugned on the ground that it comprises more than one invention. The expression "one invention" is liberally interpreted, and may embrace several distinct improvements contributing to the accomplishment of a given result. Such improvements need not be mutually dependent in operation; neither need they be capable of being embodied in a single construction. Alternative means for accomplishing a given object may also be included in a single application, but there should of course be some underlying principle common to both or all the alternatives. According to the practice prevailing in the United States, several improvements may be included in a single Patent, so long as they are capable of being embodied in a single construction; but this rule does not admit of alternative means being included and specifically claimed. For example, a design for a steam boiler may embrace (*a*) improved means for effecting combustion of the fuel; (*b*) improved means for promoting circulation and facilitating the separation of the steam from the water; and (*c*) improved means for eliminating impurities from the feed water. All these distinct and independent features might be separately claimed in the same United States Patent; but if one venture to include, say, an alternative mode of constructing the apparatus adapted for treating the feed water, the case is treated as including more than one invention. In Great Britain, a division is seldom called for unless the title or the specification relates to such diverse subject matter as to involve serious difficulty or uncertainty in indexing the invention. For example, a title such as "Improvements in

dressings pile fabrics, such improvements being in part applicable for use in shearing sheep" would probably lead to a division being called for. In such a case, the title and specification may be modified; or the eliminated matter may be made the subject of a supplementary application, to which the same date as that of the original application is accorded.

If the Examiner report that the requirements prescribed in respect of any of the conditions above referred to have not been complied with, the Comptroller may refuse to accept the application, whereupon appeal may be had to the Law Officer.

If, however, the report of the Examiner prove satisfactory, the Comptroller accepts the Application and the accompanying Provisional or Complete Specification, as the case may be, and issues a notification to that effect, such acceptance being at the same time advertised in the Official Journal of the Patent Office. Provisional protection, reckoned as from the date of application, thereupon ensues; and the invention may be published without detriment to the validity of the Letters Patent to be subsequently obtained.

As to whether it is expedient to publish an invention which has only received provisional protection is, however, a question requiring careful consideration. If it be intended to apply for Foreign or Colonial Patents, it is clearly undesirable to disclose the invention until the applications for such Patents have been lodged; but even where it is only proposed to patent the invention in the United Kingdom, premature publication is not free from risk. Provisional Specifications are frequently worded in vague and ambiguous terms. The law

does not require them to define the inventions they purport to describe; and in many instances it is questionable whether they even suffice to enable the inventions to be identified. Now it may happen that some other person has on file an application accompanied by a Provisional Specification of this character and relating to an invention in some respects similar to that of a later applicant. The first applicant, upon becoming acquainted with the details of the second applicant's invention, either through publication of the latter's Complete Specification or by a description appearing in some technical journal or by public user, may find therein something which had not previously occurred to him, but which, having regard to the indefinite character of his own Provisional Specification, he thinks himself justified in embodying in his Complete Specification and claiming in some form or other. In this manner, the first applicant procures a Patent covering some improvement which he has in reality culled and appropriated from the Specification or other publication of the applicant of later date. One of the grounds upon which opposition to the grant of Letters Patent may be based is intended to afford a remedy in cases of this kind; but the provision is not wholly adequate for the purpose, because the Patent of earlier date may be granted without the first applicant's Specification coming to the second applicant's notice; and secondly, because it is in most cases of this kind extremely difficult to determine what is and what is not a fair elaboration and development of the invention whereof the first applicant's Provisional Specification only purports to disclose the nature. The difficulty is in reality

inherent to a system which recognises the ordinary Provisional Specification as sufficient to identify an invention, and which provides for the granting of Letters Patent as of a date antecedent to that of filing a document in which the invention is fully described and defined.

Where an application is accompanied by a Provisional Specification, as distinguished from a Complete, the Specification is kept secret until a Complete Specification is lodged and accepted by the Comptroller. If the application be not prosecuted by filing a Complete Specification within nine months from the original date of application, the application is deemed abandoned, and the Provisional Specification is destroyed. Thus the application may at any time be renewed, provided that the invention has not, in the meantime, been published through other channels. Under certain circumstances, the Comptroller may enlarge the time for filing the Complete Specification from nine to ten months. The acceptance of the Complete Specification has to be procured within twelve months from the original date of application: this term may also be extended by one, two or three months.

These subsequent proceedings have been touched upon somewhat out of order, but the object of doing so has been to facilitate the consideration of the question whether it is more advantageous to accompany an application with a Provisional or with a Complete Specification. Where the invention is in an embryonic state, and time is desired for trials or experiments, or for perfecting the invention, or for ascertaining as nearly as may be the existing state of public knowledge and

determining what the applicant is entitled to claim, the lodging of a Provisional Specification would be the appropriate course. When, however, the invention has been fully worked out and the inventor is satisfied as to the precise form which his claims should take, and where he is at the same time desirous that the Letters Patent should be procured with the least possible delay, then the application may be accompanied by a Complete Specification. Steps should, however, be taken to examine the Patent Office indices relating to pending applications, with a view to determining, so far as these means admit, whether any application is pending, which, so far as can be judged from the title, would seem to relate to the same or a similar invention. Where a perusal of the titles to pending but unpublished applications discloses one or more such applications, the filing of a Complete Specification in the first instance cannot be recommended, unless steps be taken to delay the acceptance and publication thereof until the previous application or applications has or have been completed or abandoned. Such postponement of publication would of course delay the grant of the Letters Patent.

Assuming the application to have been accompanied by a Provisional Specification, the Complete Specification is required to be left within nine months—or by leave of the Comptroller, and on payment of an additional fee, within ten months—from the original date of application. The Complete Specification is then referred to an examiner for the purpose of ascertaining whether it has been prepared in the prescribed manner, and whether the invention particularly described

therein is substantially the same as that which is described in the Provisional Specification. If the examiner reports that the conditions above referred to have not been complied with, the Comptroller may refuse to accept the Complete Specification unless and until it shall have been amended to his satisfaction. Any such refusal is, however, subject to appeal to the Law Officer. The reports of the examiners are not accessible to the public or liable to production in any legal proceedings, unless the Court, or presiding officer, certifies that such production is desirable in the interests of justice.

If the examiner's report be favourable, the Comptroller accepts the Complete Specification, notifies the applicant to that effect, and causes the acceptance to be advertised in the Official Journal of the Patent Office.

Twenty-one days after 'acceptance,' the Complete Specification, together with the Provisional Specification (if any), is printed and placed on sale.

Within a period of two months from the gazetting of the acceptance of a Complete Specification, any person may give notice of opposition to the grant of the Letters Patent. The grounds on which opposition may be based are as follow:—
(1) That the applicant has obtained the invention from the opponent or from a person of whom he is the legal representative; (2) that the invention has been previously patented in this country on an application of prior date; or (3) that the Complete Specification describes or claims an invention other than that described in the Provisional Specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of

the (applicant's) Provisional Specification and the leaving of the Complete Specification.

With regard to these several grounds of opposition, the first is shortly that of fraud. In order to support an allegation of this kind, clear evidence would have to be adduced, same being set forth by means of Statutory Declarations. The parties are heard before the Comptroller, and if his decision be appealed from, the witnesses may be cross-examined at the hearing before the Law Officer. With reference to the second ground of opposition, it is necessary to show, not only that the invention has been patented in this country on an application of prior date, but that the opponent is interested, either as patentee or assignee, in the particular prior Patent brought forward, the expression "any person" being interpreted to mean 'any person having an interest.' For the purpose of an opposition, an accepted Complete Specification may be founded on, in place of a Patent. It is not sufficient to show that the invention proposed to be patented has been *described* in a prior Patent Specification. The invention must have been actually claimed in the Specification relied on, otherwise it cannot be held to have been previously patented. Want of novelty is one of the grounds on which proceedings for the *revocation* of Letters Patent may be instituted; but an opposition to the *grant* of Letters Patent cannot be founded thereon. The third ground of opposition is that to which reference has already been made in connection with concurrent applications. It is intended to afford the later of two applicants relief where he has reason to believe that the earlier applicant is attempting to embody in his Complete Specifica-

tion something which is not in his Provisional Specification but is in the Specification to the opponent's application lodged during the interval between the filing of the Provisional Specification and the filing of the Complete Specification of the first applicant.

In opposing the grant of Letters Patent, the first step is to lodge a notice stating in general terms the ground or grounds whereon the opposition is based. This is followed within fourteen days by a Statutory Declaration or Declarations made by persons competent to express an opinion on the matter involved, and setting forth in full detail the particular grounds whereon the opposition is to be supported. In a case where the invention is alleged to have been previously patented in this country, the Declarations would compare the applicant's Specification with that to the previous Patent, and point out in what respects the invention sought to be patented is identical with that previously patented by, or the property of, the opponent. Within a further period of fourteen days, the applicant lodges a Declaration or Declarations in answer, supporting his application and shewing in what respect his invention differs from that previously patented. Within a further period of fourteen days, the opponent may lodge further Declarations, these being confined to matters strictly in reply. The Comptroller then appoints a hearing, at which the parties may appear personally or by their agents or by counsel. The Comptroller, after taking time to consider the whole of the evidence and the arguments laid before him, communicates his decision stating whether he will seal the Patent or whether he refuses to seal the

Patent, or whether he will seal the Patent on condition of certain amendments being made in the applicant's Specification or claims. The Comptroller has no power to award costs to either side.

If either of the parties be dissatisfied with the Comptroller's decision, appeal may be had to the Law Officer, notice of such appeal being given within fourteen days from the date of the Comptroller's decision. An appointment is then made for a hearing before one of the Law Officers, the parties appearing personally or by their agents, or by counsel as before; and the same evidence is submitted, except that the witnesses may be examined on oath and cross-examined. There is no appeal from the decision of the Law Officer, and he may, and frequently does, award costs to the successful party.

In opposition proceedings, it should be borne in mind that the grant of Letters Patent cannot be successfully opposed on the mere ground that the use of the invention sought to be patented would involve infringement of a previous Patent. Many Patents are procured for improvements which necessarily involve the employment of some previous invention. For instance, the fact of the incandescent or "glow" lamp being the subject of Letters Patent would not prevent a perfectly valid Patent being obtained for some new mode of preparing the carbon filament for use in a lamp of this class. It will, however, be obvious that the grant of Letters Patent for the manufacture of carbon filaments would not entitle the patentee to make use of the invention covered by the lamp Patent. Before instituting proceedings in opposition, it should therefore be noted with particular

reference to the applicant's claim or claims that the invention proposed to be patented is in all essential particulars identical with the invention covered by the Patent whereon it is proposed to base the opposition.

What are commonly known as "Communication" Patents—that is to say, Patents granted for inventions communicated by persons resident abroad—stand in one respect on a somewhat exceptional footing as regards opposition on the ground of fraud. The communicator need not be the inventor, or even have the inventor's authority to communicate the invention to a person in this country with a view to procuring Letters Patent. So long as there is no evidence or even suggestion of fraud on the part of the communicatee or importer of the invention into this country, the Law Officer will not go behind his back or inquire into the circumstances under which the communicator became possessed of the invention.

In the event of no opposition being lodged within the prescribed term of two months from the gazetting of the acceptance of the Complete Specification, the Letters Patent are sealed.

Proceedings cannot be taken in respect of an infringement committed prior to the publication of the Complete Specification.

The Letters Patent are dated as of the date of the original application. The Comptroller has, however, power, when an amendment of the Application, Specification or Drawings, is called for by the office, to direct that the application and the Letters Patent granted thereon be dated as from the time when the requirement is complied with. The principal object of this provision is to prevent

a person filing a rambling or utterly unintelligible Specification; and then, on its being returned to him for amendment, keeping it for months, and ultimately filing a Specification which may embody fresh subject matter.

The term of the grant is fourteen years, and the Letters Patent extend to the United Kingdom of Great Britain and Ireland and the Isle of Man. The Channel Islands are not included.

In developing a patented invention in Great Britain, the first nine or twelve months of the total term of fourteen years are commonly lost owing in part to the prevailing practice of accompanying the application with a provisional specification. From the table which appears on the next page, it will be seen that the average term of Patents in the principal countries of the world is 15·4 years. In order, therefore, that inventors should not be placed in a less favourable position in this country than they are accorded abroad, it would seem right that the term of a British Patent should be extended from fourteen to at least sixteen years. There is probably no special virtue attaching to the term of *fourteen* years—at any rate, none has been recognised by any foreign country; but if a multiple of seven is to be regarded as possessing any peculiar charm, why not make the term twenty-one years and place this country in the forefront of those who seek to treat their inventors not with bare justice but with liberality?

Up to the end of the first four years of the term, there are no fees payable for keeping the Patent in force; but for the 5th, 6th, 7th and 8th years respectively, a renewal fee of £10 is payable; for the 9th and 10th years, the fee is

£15 per annum; and for the 11th, 12th, 13th and 14th years, £20 per annum. If the proprietor of the Patent, by accident, mistake or inadvertence, fail to make the requisite payment within the prescribed time, the Comptroller may, on due application being made and on payment of an additional fee of £3, £7 or £10, enlarge the time for one, two or three months.

The fees for maintenance are undoubtedly heavy, and in many, if not most, instances out of all reasonable proportion to the profits derived from the commercial working of the inventions to which the Patents relate. These fees are moreover considerably higher than those prevailing in most other countries, as will be gathered from the following table; the figures in the third column representing the amounts actually payable in respect of Government fees for maintenance (where prescribed) added to those required on application and issue.

Country.	Term. Yrs.	Office Fees.			Average cost per annum.		
		£	s.	d.	£	s.	d.
Great Britain . . .	14	154	0	0	11	0	0
France	15	60	0	0	4	0	0
Belgium	20	84	0	0	4	4	0
Germany	15	264	0	0	17	12	0
Austria-Hungary . . .	15	73	10	0	4	18	0
Italy	15	60	0	0	4	0	0
Spain	20	84	0	0	4	4	0
Russia	10	50	0	0*	5	0	0
British India	14	52	13	0	3	15	3
United States	17	7	3	6	0	8	5
Canada	15	12	6	0	0	16	5
Argentine Republic . .	15	71	15	0*	4	15	8
Brazil	15	160	0	0*	10	13	4
Average	15.4	90	5	0	5	16	0

* Subject to considerable variation, according to the rate of exchange.

From the above table, it will be perceived that the average term of a patent-grant in the foreign countries named is 15·4 years, as against 14 in Great Britain; that the average total cost of a Patent maintained for the full term is £90 5s., as compared with £154; and that the average annual cost is £5 16s., or about one-half that of a British Patent maintained for the full term.

It is true that the patentee is not bound to renew his Patent beyond the first four years if he finds it inexpedient so to do; but it frequently happens that he has several Patents in connection with the same subject, each, if considered alone, relating perhaps to comparatively unimportant improvements. The full maintenance of his rights under such circumstances subjects him to a heavy tax; and as the nett profits of the Patent Office now amount to about £100,000 per annum, it is to be hoped that a substantial reduction will at no distant date be made in the scale of fees payable for maintenance. Under the oppressive influence of the scale at present in force, statistics show that only about 32 per cent. of the Patents granted are renewed for the 5th year; 18·5 per cent. for the 8th year; 11 per cent. for the 11th year; and about 10 per cent. for the 14th year.

In a paper read before the Institute of Patent Agents in 1889, the author proposed the following scale of fees:—For the first four years of the term of the Patent, £4 (as at present); for the 5th year, £5; for the 6th year, £6; and so on up to £14 for the 14th year. In the case of a Patent maintained for the full term, this scale would yield a total of £99 or an average of £7 1s. 6d. per annum. Moreover, a scale arranged on such

a plan would incidentally indicate the precise amount of the fee due in respect of the particular year for which the Patent is to be maintained.

After the Patent has been sealed, and sometimes even before it has passed that stage, it may be found that the description contained in the Specification is insufficient to enable the invention to be carried into effect, or that the drawings appended are incorrect, or that the claims are too wide or are insufficiently definite. Under any such circumstances, the applicant, patentee or assignee of the Patent, may seek leave to amend by way of disclaimer, correction or explanation. The alterations desired have to be clearly defined, and are advertised in the Official Journal of the Patent Office. The applicant for leave is further required to procure the insertion of advertisements in one or two of the daily or weekly periodicals intimating that leave to amend has been applied for.

It sometimes happens that after the expense and delay incidental to advertising an application for leave to amend has been incurred, the Comptroller raises an objection to the amendment. As the Comptroller's approval of the proposed amendment has to be obtained sooner or later, it would seem more convenient if the question of its suitability for acceptance were considered and determined before the application for leave is advertised for public opposition instead of subsequently. The practice of the Office would, however, appear to be based on Rule 59, which requires an amendment to be "forthwith advertised."

Within one month from the announcement in the Official Journal of the Patent Office of the application for leave to amend having been made,

any person may give notice of opposition to the allowance of the amendment sought. As in the case of opposition to the grant of Letters Patent, a person opposing an amendment must be a person having an interest. For instance, he may consider that the amendment proposed would have the effect of so altering the scope of the Specification as to render something he has been in the habit of doing an infringement, whereas hitherto it had been no infringement. Both parties are then heard before the Comptroller, and in the event of their being dissatisfied with his decision, appeal may be had to the Law Officer. Similarly when, in the absence of opposition, leave to amend is refused by the Comptroller, the person making the request may appeal from his decision to the Law Officer.

It is specially provided that no amendment shall be allowed that would make the Specification as amended claim an invention substantially larger than, or substantially different from, the invention *claimed* by the Specification as it stood before amendment. Thus, after the acceptance and publication (and possibly after the filing) of a Complete Specification, the scope of the Patent can never be extended, although it may be narrowed; the patentee being limited to what he has *claimed*, although possibly he may have *described* that which he subsequently seeks to resume possession of.

In an action for infringement of a Patent, or in a proceeding for revocation, the patentee may, upon an order of the Court, apply for leave to amend his Specification by way of disclaimer, the hearing of the action being meanwhile postponed. Formerly an application for leave to amend *pendente lite* necessitated the abandonment of the action.

Where a Specification has been amended, no damages are recoverable in respect of infringement previous to the amendment unless the patentee satisfies the Court "that his original claim was framed in good faith and with reasonable skill and knowledge." Applicants who are not possessed of "reasonable skill and knowledge" in the difficult and peculiarly technical work of drawing Patent Specifications and Claims will therefore recognise the expediency of procuring competent professional assistance in such matters.

A Patent may be assigned either as a whole or in part. Assignments may also be made in respect of specified districts or localities. All assignments of, and licences under, Patents should be registered at the Patent Office, in order to give the public notice of an assignment or licence, as the case may be, having been effected. Unless and until an assignment is registered, the assignee cannot maintain an action to restrain infringement.

There is no obligation to work an invention in order to maintain the Patent, but power is given to the Board of Trade to compel patentees to grant licences. This provision is made with a view to preventing a patentee pursuing a "dog-in-the-manger" policy—that is to say, omitting to work the invention himself, and refusing to allow anyone else to do so. The grounds on which a petition for what is termed a "compulsory licence" may be based are as follow:—(1) The Patent is not being worked in the United Kingdom; (2) the reasonable requirements of the public with respect to the invention cannot be supplied; or (3) any person is prevented from working or using to the best advantage an invention of which he is

possessed. The order of the Board of Trade may be enforced by mandamus, and there is no appeal.

A Patent granted under the Act at present in force is good against the Crown; but the invention may be used for the public services on terms to be, before or after the use thereof, agreed on; or, in default of agreement, on such terms as shall be settled by the Treasury.

Letters Patent may be revoked on petition to the Court. The grounds on which proceedings for revocation may be brought are:—(1) That the Patent was obtained in fraud of the petitioner's rights, or of the rights of a person under or through whom he claims, or that he or such other person was the true and first inventor of the invention included in the claims of the patentee; or (2) that the petitioner, or a person under or through whom he claims an interest in any trade, business or manufacture, had publicly manufactured, used or sold within this realm before the date of the Patent anything claimed by the patentee as his invention. The plaintiff delivers with his petition particulars of the objections on which he means to rely. The defendant is entitled to be first heard in support of the Patent; and, in the event of the plaintiff giving evidence impeaching the validity of the Patent, the defendant has a right to reply.

Where a Patent has been revoked on the ground of fraud, the Comptroller may, on the application of the true inventor, grant to him a Patent in lieu of, and dated as of the date of revocation of the Patent revoked; but the term of the Patent so granted is limited to the residue of that of the Patent revoked. Having regard to the date which the substituted Patent is required

to take, it is not clear how the validity of that Patent is protected against the effect of possible publication of the invention by the fraudulent applicant prior to the date of revocation.

In an action for infringement or revocation of a Patent, the Court is required, on the request of either of the parties, to call in the aid of a specially qualified assessor to assist the Court in trying the case. This provision was made to meet a popular idea that judges frequently experience difficulty in grasping the technical details of mechanical, electrical, chemical and other inventions. This impression is, however, for the most part erroneous; and, as a matter of fact, the assistance of a technical assessor is very rarely called for.

Where a patentee deems it necessary, for the protection of his rights, to issue notices warning persons against the use of an article or process which appears to infringe his Patent, he should forthwith institute proceedings to restrain the sale of the alleged infringing article or the use of the infringing process; otherwise he lays himself open to an action for what is called 'slander of title.' Formerly, a case of this kind turned on the question as to whether the notices or threats of action for infringement were issued *bonâ fide*, and the validity of the Patent in respect of which such notices were issued could not be disputed. Where the person making the threats does not with due diligence commence and prosecute an action for the alleged infringement, the question as to whether an infringement has taken place or is threatened may now be raised, and the validity of the Patent called into question.

At the expiration of the term of fourteen years

for which the Patent is granted, the invention falls into the public domain, or, in other words, becomes public property. In cases of meritorious inventions, it is within the discretion of the Judicial Committee of the Privy Council to recommend the prolongation of the term of the exclusive privilege; and extensions are sometimes granted for seven or even ten years, and in very exceptional cases for fourteen years. A petition with this object should be lodged between five and six months before the expiration of the term of the Patent; and it is necessary for the petitioner to prove that the invention is one conferring substantial benefit on the public, and that the inventor has not been adequately rewarded for his ingenuity and labour. A full account of the receipts and disbursements incidental to the working of the Patent must be furnished; and if the invention has been patented abroad, accounts appertaining to the working of the Foreign Patents must be included. Patentees should therefore be careful to keep accurate accounts of such matters from their commencement. A petition for an extension of term may be opposed by any interested party, and the Judicial Committee may award costs to either side. The costs incidental to proceedings of the kind under consideration, even where no opposition is met with, are rather considerable; and it is probable that most patentees would, on the whole, prefer to forego the remote chance of securing an exercise of the royal prerogative in their favour in consideration of the original term of the grant being extended to say sixteen years. The average terms of Letters Patent in the principal foreign countries is over fifteen years. In the United States the term is seventeen years.

The application of the word "Patent" or "Patented" to an article when no patent has been granted for the same is punishable by a fine of £5. Goods are sometimes represented as "patented" when Letters Patent have been only applied for. Until the patent is actually sealed, goods should only be marked "Patent applied for," or "Provisional protection obtained." It is not, however, obligatory in this country to indicate, by any particular marking of goods, that they are the subject of Letters Patent. In many foreign countries, it is not only necessary to mark patented articles in the manner above alluded to, but to specify the date or reference number of the patent.

According to the provisions of the International Convention for the Protection of Industrial Property, signed at Paris 20th March 1883, and acceded to by Great Britain 17th March 1884, any person who has duly applied for a Patent in one of the contracting States shall enjoy, as regards the other States, a right of priority during a period of six months for procuring Patents in such other States. A month longer is allowed for "countries beyond sea." According to the interpretation adopted by the British authorities, Great Britain is regarded as a country "beyond sea" in relation to France and other countries at a distance of only a day's post; but it does not follow that all Continental countries will adopt the same interpretation, having regard to the fact that the additional term was in reality allowed in view of the extra time necessarily involved in communicating between countries separated by long distances. The proper meaning to be attached to the phrase is uncertain in other

respects. For example, the Australian Colonies are doubtless countries "beyond sea" as regards American States or European countries; but is France a country "beyond sea" in relation to a country in the position of India, or is Brazil a country "beyond sea" in relation to the United States of America? So far therefore as regards Continental Patent applications made under the Convention and relating to inventions for which British Patents have been granted or sought, it will be preferable to lodge the Continental applications within *six* months from the date of the British application.

The countries which, in addition to Great Britain, at present belong to the International Union are:—Belgium, Brazil, Dominica, Dutch East Indies, France, Guatemala, Italy, Mexico, Netherlands, Norway, Portugal, Servia, Spain, Sweden, Switzerland, Tunis and the United States of America. Arrangements of a similar description are also in force as between Great Britain and the following countries and colonies:—New Zealand, Paraguay, Queensland, San Domingo and Uruguay.

When, in making application for Letters Patent, priority is claimed under the Convention, the form of the application is of a special character; and an officially-certified copy of the Specification which accompanied the foreign application is required. Priority secured under the Convention is not confined to affording one applicant precedence over another in a case of conflicting or approximately concurrent applications, but frequently enables Patents to be obtained which, except for the operation of the Convention, would be invalid by reason of the inventions having been

already published in this country. The office of the International Union is established at Berne; the contracting States contributing in certain proportions the cost of maintenance. The official organ of the Union is entitled "*La Propriété Industrielle*," and appears in monthly numbers.

In the event of a Patentee finding reason to believe that his Patent is being infringed, he should, before taking any action, consider whether his supposed exclusive rights are capable of being enforced; and, with this object, may advantageously submit his Patent to an experienced Patent Agent for investigation and report. In order to ascertain whether the Patent may be relied upon as valid, it may become necessary to institute an exhaustive search for the purpose of ascertaining whether, or to what extent, the invention possessed novelty at the date of the Patent. The sufficiency of the Specification is also a matter for careful consideration. The subject matter of one or more of the claims may turn out to be wanting in novelty, and may require to be struck out; or the Specification may need amendment in other respects. Under such circumstances, an application for leave to amend should be prepared and lodged without delay; and it is advisable to carry out these preliminaries before in any way notifying the supposed infringer of the intended attack; the object being, so far as possible, to avoid provoking opposition to the application for leave to amend. At the same time, no unnecessary delay should be allowed to take place; as the Courts distinctly disapprove of a Patentee "lying by" after he has come into possession of information leading him to believe that his Patent

is being seriously infringed. Immediately therefore that a patentee has satisfied himself that his Patent is in a condition calculated to admit of its being supported in a Court of Law, he should place the matter in the hands of a solicitor well versed in the conduct of proceedings of the kind contemplated, and instruct him to call upon the infringer to desist and to render an account of all articles made or sold in infringement of the Patentee's rights. If the application be ignored, the assistance of the Court may be sought to restrain the infringement. Pending the trial of the action, an interim injunction is usually applied for; but the usual practice of the Courts is merely to order the defendant, pending trial of the action, to keep an account of all articles made or sold. With the statement of claim, the plaintiff lodges Particulars of Breaches, enumerating such alleged infringing acts as have come to his knowledge. The defendant files a Statement of Defence, and commonly adds Particulars of Objections to the plaintiff's Patent, stating various grounds in support of a contention that the Patent is invalid. On these materials, the opinions of Experts, skilled in the branch of knowledge concerned and accustomed to give evidence before the Courts, are usually taken, with a view to the retention of their services at the trial. In all these matters, a Patent Agent who has received a regular training as an engineer or chemist, as the case may be, and who is experienced in the collation of evidence and the prosecution of actions for infringement, will be found of the greatest assistance.

In connection with the acquisition and maintenance of Patent rights, it is proper that some

reference should be made to The Institute of Patent Agents, and to the part that body has taken in promoting improvements in the Law and practice relating to the grant of Patents and the registration of Designs and Trade Marks. This Institute was incorporated in 1882, and, according to its Memorandum of Association, the following are amongst the objects for which it was established:—

- (a) To form a representative body of the Patent Agents of the United Kingdom for the purpose of promoting improvements in the Patent Laws and in the regulations under which they are administered.
- (b) To frame and establish rules for the observance of Patent Agents in all matters appertaining to their professional practice.
- (c) To extend their opportunities and facilities for meeting, correspondence, discussion and interchanging ideas respecting matters connected with their professional practice, and generally to aid in the acquisition and dissemination of knowledge appertaining to their profession.

The Institute includes all the leading members of the profession, and its affairs are conducted by a President, Vice-President and Council elected by the Fellows. There are also classes for Associates, Foreign Members and Graduates. Frequent meetings are held for the reading and discussion of papers of an interesting and instructive character; such gatherings having the effect, not only of largely increasing the knowledge possessed by individual members concerning a great variety of matters incidental to the efficient discharge of

their professional duties, but of encouraging and developing a common endeavour to raise the general status of the profession. Before the Patents, etc. Act of 1883 was passed, the provisions of the Bill were repeatedly submitted to the Institute for their views, and their recommendations for its improvement were fully considered by the authorities and for the most part adopted.

In 1888, an Act was passed establishing a Register of Patent Agents, and providing that any person knowingly describing himself as a Patent Agent without having been duly registered should be liable to a fine of £20. The Institute was entrusted with the custody of the Register and empowered to appoint a Registrar; but all those persons who could satisfy the Board of Trade that they had, prior to the passing of that measure, acted in the capacity of Patent Agent—although perhaps only in respect of a single application—were held to be entitled to registration. Other persons can only qualify for registration by passing an examination in Patent Law and Practice and Elementary Science. These examinations take place annually, and are conducted by the Council of the Institute of Patent Agents. Admission to the Register does not in any sense constitute admission to the Institute; so that the public still have the means of distinguishing those Agents who are recognised by the profession as competent and trustworthy. The Council can of course exercise but little moral or other control over persons who do not belong to the Institute.

With a view to further enhancing the influence of the Institute, increasing its power to carry out the objects for which it was formed, and enabling

it more effectively to perform the duties which have recently devolved upon it, a petition for a Royal Charter of Incorporation has been presented. This petition has been very favourably received, and it is expected that the existing Institute will very shortly become "The Chartered Institute of Patent Agents."

As inventors and patentees are drawn from all classes of society—the rich and the poor, the skilled and the unskilled, the educated and the uneducated—and as some appear to have a very vague idea as to the functions of a Patent Agent, it may be well to explain that primarily his duty consists in advising inventors as to the best mode of securing protection for their inventions, and in carrying out such measures as may be necessary for accomplishing that object. Incidentally he is called upon to advise on questions of alleged infringement and various matters connected with the maintenance of patent rights; but it is no part of his duty to undertake the commercial working or sale of Patents; neither will any Patent Agent of position and respectability interest himself pecuniarily in his clients' patents. The opinion of a Patent Agent who is known to have an interest, other than a purely professional one, in this, that and the other Patent, cannot be expected to carry weight; although his advice may, as a matter of fact, be perfectly conscientious and uninfluenced by considerations of personal interest. Moreover, the commercial working of patented inventions calls for abilities and business aptitude of a kind utterly different from those which distinguish the expert Patent Agent. To instance a parallel case, an architect might be exceedingly skilful in

designing dwelling houses, and yet might possess but few of the qualities necessary for the successful conduct of a house agent's business. A word of caution may therefore be offered with regard to Patent Agents who profess to be able to find purchasers for all kinds of inventions. There is too much reason to fear that such representations are in many instances put forward with the sole object of attracting patent agency business. It is not, however, the intention of the writer to dilate upon the various practices to which some persons calling themselves Patent Agents, and to whom the Board of Trade have not felt justified in refusing registration, resort. There are doubtless some 'black sheep' in every profession, and that of Patent Agency cannot claim exemption in this respect; but by the exercise of ordinary caution and by making due enquiry, an inventor ought not to find the selection of a competent and trustworthy Agent a matter of serious difficulty. The perusal of advertisements is not likely to afford the enquirer much assistance in arriving at a satisfactory result, as the leading members of the profession do not advertise.

One fruitful source of trouble in connection with Patents for foreign inventions arises from the circumstance that the specifications and claims are usually prepared abroad, and are in many instances but imperfectly suited, or wholly unsuited, to afford the inventions described protection in Great Britain. Unless such documents be carefully reconsidered and amended by a competent Agent before being filed, it ultimately results that the patentees, on attempting to arrange for the working or disposal of their Patents, find them-

selves confronted by adverse reports from Patent Experts, owing to technical defects which would in all probability have been detected and rectified had the conduct of their applications in this country been entrusted to an Agent of adequate skill and experience and under suitable instructions. Claims which may be well adapted for use in the United States, for example, are in many cases far from being in the best form for protecting the invention in the United Kingdom; and instead of being simply instructed to lodge the application (charging a merely nominal fee for so doing) the Agent on this side should be authorised and requested to carefully revise the specifications and claims with a view to specially adapting them to the requirements and peculiarities of English Law and Practice.

The following forms will be found adapted for use in ordinary cases; the form of Application being the same whether accompanied by a Provisional or a Complete Specification. They may be written out on strong wide-ruled paper (one side only) of a size of 13 inches by 8 inches, leaving a margin of 2 inches on the left-hand side. A cautious inventor will not, however, attempt to file an application without taking counsel with an experienced Patent Agent. In the foregoing notes, an endeavour has been made to explain the more important points which commonly arise in Patent practice; but almost every case presents some exceptional feature calling for special consideration and treatment. It is desirable that inventors and patentees should be acquainted with the main provisions of the Patent Law and with the general nature of the practice thereunder, and

such information may readily be gathered from books; but the skill necessary for the proper preparation of Patent specifications and claims can only be acquired by experience. If an invention be worth patenting at all, it is presumably worth patenting in such a manner as to admit of the invention being accorded legal protection; otherwise the description contained in the specification simply serves to convey information to rival manufacturers.

The appended forms may nevertheless be found useful under certain circumstances. For instance, an inventor might find it convenient to prepare and sign the forms of Application and Authorisation and transmit same, together with a full description of the invention, to an Agent at a distance, who would then be in a position to prepare the documents for filing and to lodge the application forthwith. As a general rule, however, it would be advisable for the inventor to have the specification submitted for his approval before being filed. The instructions to the agent should be sufficiently full to enable him to thoroughly grasp the invention, and should indicate to him which are the particular features of novelty and utility to which importance is to be attached.

PATENTS, DESIGNS AND TRADE MARKS ACTS,1883 to 1888.

Form A.

PATENT.APPLICATION FOR PATENT.

(a) Here insert
name, full
address and
calling of
applicant or
applicants

(a) _____

_____, do hereby

declare that _____ in possession of an invention for

(b) Here insert (b)
title of in-
vention, or
leave same
for Agent
to fill in.

(b) _____

(c) In the case that (c)
of more than
one appli-
cant, state
whether all,
or if not, who
is or are the
inventor or
inventors.

that (c) _____
_____ the true and first inventor _____ thereof; and
that the same is not in use by any other person or
persons to the best of _____ knowledge and belief; and
_____ humbly pray that a patent may be granted to _____
for the said invention.

Dated the _____ day of _____ 18____

(d) To be signed
by appli-
cant or ap-
plicants.

(d) _____

PATENTS, DESIGNS AND TRADE MARKS ACTS,1883 to 1888.

AUTHORISATION.

the undersigned applicant____for Letters Patent for

desire that all official communications relating to the same
may be addressed to

Insert name
and address
of Agent.

and that he be recognised as_____authorised Agent in
all proceedings incident thereto.

Dated, the_____day of_____18__

To be signed
by appli-
cant or ap-
plicants

PATENTS, DESIGNS AND TRADE MARKS ACTS,**1883 to 1888.****Form B.****PROVISIONAL SPECIFICATION.****(To be furnished in Duplicate.)**(a) Here insert
title as in
declaration.(a) _____

_____(b) Here insert
name, full
address and
calling of
applicant or
applicants,
as in declar-
ation(b) _____

_____do hereby declare the nature of this invention to be
as follows:—(c) Here insert
short de-
scription of
invention.(c) _____

Dated, the _____ day of _____ 18____

PATENTS, DESIGNS AND TRADE MARKS ACTS.1883 to 1888.**PATENT.****Form C.****COMPLETE SPECIFICATION.****(To be furnished in Duplicate.)**(a) Here insert
title as in
declaration.

(a) _____

(b) Here insert
name, full
address and
calling of
applicant or
applicants,
as in declar-
ation.

(b) _____

do hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement :—

(c) Here insert
full descrip-
tion of in-
vention

(c) _____

Having now particularly described and ascertained the nature of this Invention, and in what manner the same is to be performed, _____
claim:—

Here state
distinctly
the feature
or features
of novelty
claimed.

Dated, the _____ day of _____ 18____

DRAWINGS.—When drawings are required for the proper elucidation of the invention, they are usually prepared by the Agent; but in the event of an applicant preferring to have them prepared under his own supervision, the following conditions must be complied with. They must be made on pure white, hot-pressed, rolled or calendered drawing paper, of smooth surface and good quality, and, where possible, without colour or Indian-ink washes.

The sheets must be of one of the two following sizes:—13 inches at the sides by 8 inches at the top and bottom, or 13 inches at the sides by 16 inches at the top and bottom, including in either instance a margin of $\frac{1}{2}$ -inch all round.

To ensure satisfactory reproduction by photolithography the drawings must be executed with *absolutely black Indian-ink; the same strength and colour of fine and shade lines to be maintained throughout.* Section lines, and lines for effect or shading lines, must not be closely drawn. Reference figures and letters must be distinct and not less than $\frac{1}{8}$ of an inch in height. The same letters should be used in the different views of the same parts. In cases of complicated drawings, the reference letters must be shown outside the figure, and connected with the parts referred to by fine lines.

The scale adopted should be large enough to show clearly wherein the invention consists, and only so much of the apparatus, machine, etc., need be shown as effects this purpose.

Sufficient space should be left at the top of each sheet for the insertion of the name of the applicant, the number and year of the application, the number of sheets sent in, and the serial

number of each sheet. A space should also be left in the right-hand bottom corner for the signature of the applicant or of his agent.

No written description of the invention should appear on the drawings.

A *facsimile* of the original drawings, but *without* colour or Indian-ink washes, must accompany the originals, and be marked "true copy." It is usual to prepare the original on thin Bristol board, and the copy on smooth drawing paper.

CONTENTS.



	PAGE
ABANDONMENT OF APPLICATION (<i>see</i> Application).	
ACCOUNT OF ARTICLES MADE OR SOLD.	
Defendant usually required to keep, pending trial of action for infringement	29
ADVERTISEMENT.	
Of acceptance of application	8
Of acceptance of Complete Specification	12
Of proposed amendment	20
Of proposed amendment, proposed alteration in the practice relating to	20
ALTERATION (<i>see</i> Amendment).	
AMENDMENT.	
Circumstances under which necessity arises for	28
When and how effected	20, 21
Advertisement of proposed	20
Notice of opposition to	21
Proceedings in opposition to	21
Scope of Patent cannot be extended by	21
Suggested alteration of rule relating to adver- tisement of	20
APPEAL FROM COMPTROLLER TO LAW OFFICER.	
On refusal of Comptroller to accept Application	8
On refusal of Comptroller to Complete Specification	12
On refusal of Comptroller to Seal Letters Patent	15
On refusal of Comptroller to grant leave to amend Specification	21
Who may be heard in cases of	15
Costs may be awarded in case of	15
Decision of Law Officer is final	15
APPLICANT (<i>see</i> "Application, who may make").	

	PAGE.
APPLICATION.	
Form of, for Great Britain	36
Must be limited to one invention	7
Who may make	2, 3
May be accompanied by either Provisional or Complete Specification	4
When desirable to be accompanied by Provisional Specification	10, 11
When desirable to be accompanied by Complete Specification	10, 11
Powers of Comptroller as to dating	16
Circumstances under which Comptroller may refuse	4
When Supplementary may be made	8
Supplementary to bear date of original	8
Advertisement of acceptance of	8
Under International Convention, form of	27
Under International Convention, Certified Copy of Specification originally filed abroad required	27
In United States must be made in the name of the Inventor	3
ASSIGNEE.	
Cannot institute proceedings for infringement un- less assignment registered	22
Issue of Patent to ; practice in United States	3
ASSIGNMENT OF LETTERS PATENT.	
Procedure for the	22
May be whole or partial	22
Must be registered	22
"AYANT DROIT."	
Meaning of term and powers of	3
"BEYOND SEA."	
Meaning of term	26
BOARD OF TRADE.	
Power of, to order grant of licence	22, 23
BREACHES (<i>see</i> Particulars of Breaches).	

	PAGE
BRITISH PATENT.	
What may be embraced by	7
Cost of	17, 18, 19
Duration of	17, 18, 19
Suggestion as to extended term for	17
Suggested modified scale of renewal fees for	19
Cannot be extended by amendment of Specification	21
CHANNEL ISLANDS.	
British Patent does not extend to	17
CLAIM.	
Complete Specification must end with	4
Limits within which must be confined	6
COLONIAL AND FOREIGN PATENTS (<i>see</i> also "International Convention").	
Course to be pursued when intending to apply for	8
Cost of	18
Term of	18
COMMUNICATION OF INVENTION FROM ABROAD.	
Who may make	3, 16
COMPANY.	
May be joined with Inventor in application	2
COMPLETE SPECIFICATION.	
May accompany application	4
What must be contained in	4
When desirable to file with application	10, 11
When desirable to delay lodging of	11
When filed, referred to Examiner	11
Grounds on which Comptroller may refuse acceptance	12
Enlargement of time for filing	10, 11
Enlargement of time for procuring acceptance	10
Within what term to be accepted	10
Advertisement of acceptance of	12
When printed and placed on sale	12

	PAGE
COMPTROLLER.	
Powers of, in regard to application	4, 6
Powers of, in regard to dating application	16
Acceptance of application by, what it signifies	5
May enlarge time for filing complete specification	10, 11
May enlarge time for acceptance of complete specification	10
May refuse to accept complete specification unless amended	12
Hearing before, in case of opposition to grant	13, 14
Has no power to award costs	15
May enlarge time for paying renewal fee	18
May grant Patent in lieu of Patent revoked	23
CONTINENTAL APPLICATIONS.	
Advice as to time of filing	26
CONVENTION (<i>see</i> International Convention).	
CORRECTIONS (<i>see</i> Amendment).	
COST.	
Relative of British and Foreign Patents	17, 18, 19
COSTS.	
Comptroller no power to award	15
May be awarded by Law Officer	15
CROWN.	
Principle of Bargain between, and Inventor	1
Patent good against the	23
May use patent for public service conditionally	23
DAMAGES.	
When not recoverable in respect of infringements	16, 22
DATE OF APPLICATION AND OF PATENT.	
Circumstances under which Comptroller may alter	16
DECEASED INVENTOR.	
Legal representative of, may apply for Letters Patent within six months of decease	3
DECLARATIONS IN CASES OF OPPOSITION TO GRANT.	
Time and manner of lodging	14

	PAGE
DELAY.	
Should be avoided in taking proceedings for in- fringement	28
DISCLAIMER (<i>see</i> Amendment).	
DRAWINGS.	
Examination of	4
Instructions for preparing	40, 41
DURATION OF BRITISH AND FOREIGN PATENTS.	
Relative	17, 18
ENLARGEMENT OF TIME.	
For lodging Complete Specification	10, 11
For procuring acceptance of Complete Specifi- cation	10, 11
For payment of renewal fees	18
EXAMINATION (<i>see</i> Examiner).	
EXAMINER.	
Functions of, in respect of application	4
Functions of, in respect of Provisional Specification	4
Functions of, in respect of Complete Specification	4, 11
Favourable report by, not ground for assuming exclusive rights in invention	5
Report by, not accessible to the public	12
EXPERTS.	
In what circumstances employed	29
EXPLANATION (<i>see</i> Amendment).	
EXTENSION OF TERM OF BRITISH PATENT.	
Suggestions for (<i>see</i> also "Prolongation of Term")	17
EXTENSION OF TIME (<i>see</i> "Enlargement of Time").	
FEEs.	
For renewal	17, 18
For renewal, suggestions as to	19
For extension of time for paying renewal fees	18

	PAGE
FOREIGN AND COLONIAL PATENTS (<i>see also</i> "International Convention").	
As to disclosure of invention before applying for	8
Cost of	18
Term of	18
Who may apply for	3
FOREIGN INVENTIONS.	
Frequently patented in Great Britain without reconsidering original specification	33
FORMS USED IN CONNECTION WITH PATENTS.	
Information concerning	34
Form of Application for Patent	36
Form of Authorisation as Agent	37
Form of Provisional Specification	38
Form of Complete Specification	39
FRAUD.	
A ground for opposing Grant of Letters Patent	12, 13
Allegations of, to be supported by Statutory Declaration	13
A ground for revocation of Letters Patent	23
GERMANY.	
Official examination in, as to novelty of invention	5
HEARING (<i>see</i> "Comptroller," also "Law Officer").	
INDEFEASIBLE RIGHT.	
Not implied by Grant of British Patent	5
INFRINGEMENT.	
Course to be pursued in case of	24, 28, 29
Assistance of Patent Agent desirable in case of . .	28
Proceedings in action for	21, 28, 29
Of previous patent by new invention, not ground for opposition	15
Of previous patent by new invention, not ground for refusing Patent	15
INFRINGEMENTS PRIOR TO PUBLICATION OF COMPLETE SPECIFICATION.	
Damages not recoverable in respect of	16

	PAGE
INFRINGEMENTS PRIOR TO AMENDMENT.	
Damages only conditionally recoverable in case of	22
INJUNCTION (<i>see</i> "Interim Injunction").	
INSTITUTE OF PATENT AGENTS.	
Objects for which founded	30
Powers of	30, 31
Membership of, what implied by	31
INTERIM INJUNCTION.	
Usually applied for in cases of infringement	29
INTERNATIONAL CONVENTION.	
Advantages of	26
Principal provisions of	26
Form of Application for Patent under	27
INTERNATIONAL UNION.	
Countries belonging to	27
Office of the	28
Official Organ of the	28
INVENTION.	
What constitutes an	2
What constitutes "One Invention"	7
Must be disclosed in Provisional Specification	4
Must be fully described and ascertained in Complete Specification	4
Not patentable if contrary to morality	4
INVENTOR.	
And the Crown, relations of	1
May be joined in application with Non-Inventor or with a Company	2
Application must distinguish the	3
Application in United States must be in the name of	3
Communicatee of invention from abroad treated as the	3
IRELAND.	
Included in British Patent	17

	PAGE
ISLE OF MAN.	
Included in British Patent	17
JOINT APPLICATION.	
For Letters Patent	2, 3
" <i>La Propriété Industrielle.</i> "	
The Official Organ of the International Union	28
LAW OFFICER.	
Appeal to, against refusal of Comptroller to accept application	8
Appeal to, against refusal of Comptroller to accept Complete Specification	12
Appeal to, in reference to Grant of Letters Patent	15
Appeal to, in respect of opposition to proposed amendment	21
Who may be heard before	15
May award costs	15
No appeal from decision of	15
LEGAL REPRESENTATIVE OF DECEASED INVENTOR.	
May apply for Patent	3
LICENCE.	
Must be registered	22
Power of Board of Trade to compel grant of	22
"MANUFACTURE."	
Meaning of term	3, 4
MONOPOLIES.	
Statute of	1
MORALITY.	
Patent may be refused if invention contrary to	4
NON-INVENTOR.	
May be joined with Inventor in application	2
NOTICE OF OPPOSITION (<i>see</i> Opposition).	

	PAGE
NOVELTY.	
Of Invention (<i>see</i> "Search as to," etc.).	
Of Invention (<i>see</i> "Want of Novelty").	
Of Invention not in itself sufficient to impart validity to Patent	5
Of Invention, Examiner not authorised to express opinion concerning	4
Of Invention, Comptroller not empowered to reject application on the ground of want of	4
OBJECTIONS (<i>see</i> "Particulars of Objections").	
OFFICIAL JOURNAL OF THE PATENT OFFICE.	
Notification in, of acceptance of application	8
Notification in, of acceptance of Complete Specification	12
"ONE INVENTION."	
Interpretation of the term	
OPPOSITION.	
To sealing of patent, grounds of	12
To sealing of patent, proceedings in connection with	12, 13, 14
To sealing of patent, hearing before Comptroller . .	14
To sealing of patent, who entitled to be heard . .	13
To sealing of patent, who entitled to be heard before Law Officer	5
PARTICULARS OF BREACHES (<i>see</i> "Infringement").	
PARTICULARS OF OBJECTIONS (<i>see</i> "Infringement").	
PATENT.	
Term of British	17
Circumstances in which Comptroller may alter date of	16
PATENT AGENT.	
Advisability of employing	22, 28, 29, 33, 34
Penalty incurred by person improperly describing himself as such	31
Registration of, does not admit to Institute of Patent Agents	31

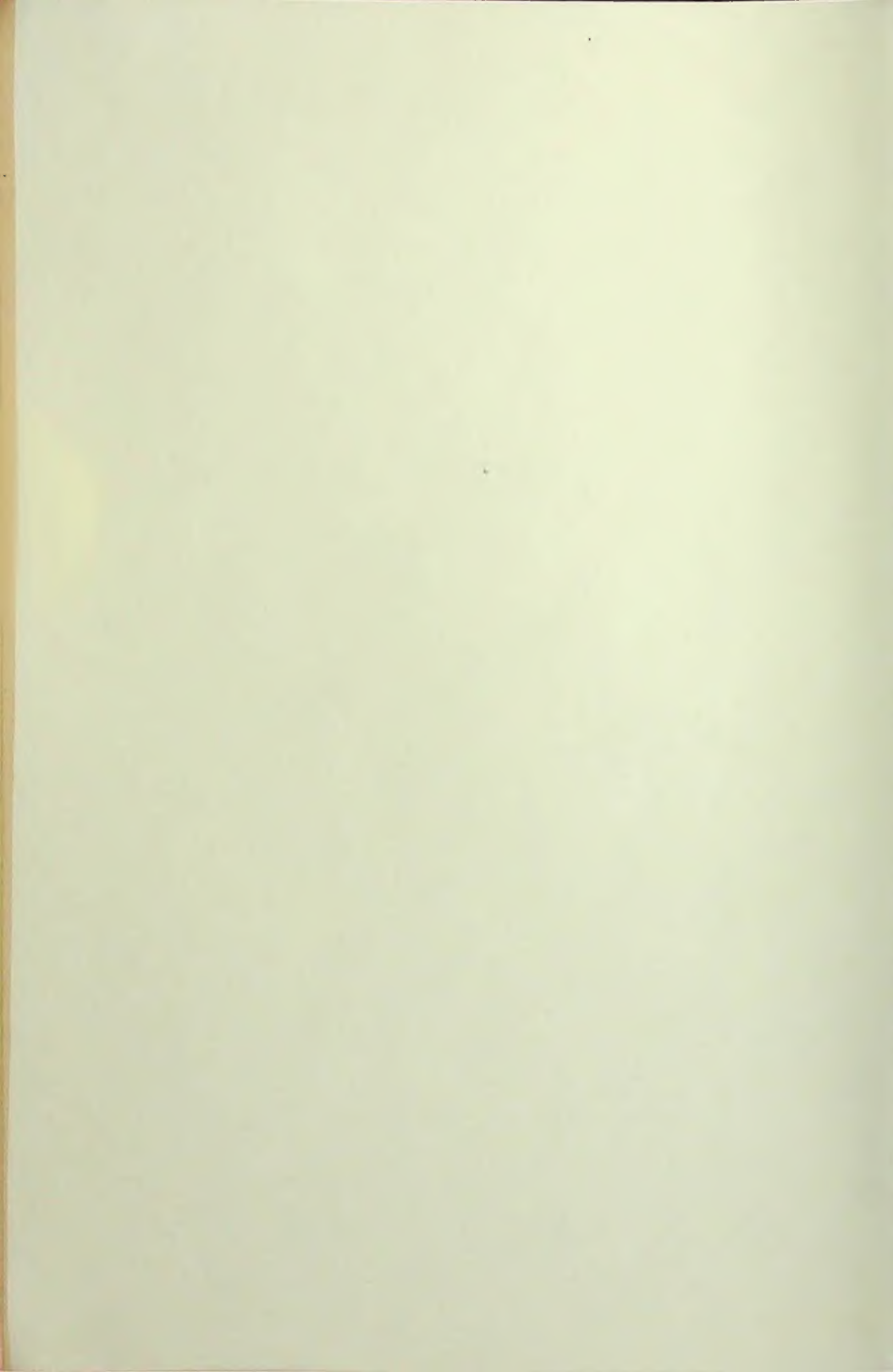
	PAGE
PATENT AGENTS.	
Qualifications of	31, 32, 33
Functions of	32
Persons entitled to act as	31
Register of	31
Examination of persons desiring to be registered as	31
Institute of	30, 31, 32
PATENT OFFICE.	
Official Journal of	8, 12
Profits of	19
PATENTED.	
What may be	3
Marking goods "Patented"	26
PATENTS AND GRANTS OF PRIVILEGE.	
Reservation in favour of, under Statute of Monopolies	1
PATENTS—BRITISH (<i>see</i> "British Patents").	
PATENTS—FOREIGN AND COLONIAL (<i>see</i> "Foreign and Colonial Patents").	
PERSON.	
Meaning of expression "any person may oppose"	13
PRIORITY UNDER CONVENTION.	
Who may claim	26
Time within which should be claimed	26
Form of Application where claimed	27
What is implied by	27
PRIVY COUNCIL.	
Powers of, in regard to prolongation of patent	25
PROCESS AND PRODUCT.	
Either or both may be patented	4
PRODUCT (<i>see</i> above).	
PROLONGATION OF TERM OF PATENT.	
Proceedings to obtain	25
Proceedings to obtain, costs in connection with	25
Grounds on which petition for, may be opposed	25

	PAGE
PROVISIONAL SPECIFICATION.	
Only required to disclose nature of invention	4
Referred to Examiner	4
Kept secret until lodging of Complete Specification	10
Destroyed if Complete Specification not lodged	10
When and when not desirable to lodge with application	10, 11
When printed and placed on sale	12
Difficulties incidental to system admitting use of	9
PROVISIONAL PROTECTION.	
Ensues on acceptance of application	8
Dates from date of application	8
How affected by publication of Invention during term of	8
PUBLICATION (<i>see</i> "Novelty").	
Of Provisional Specification suppressed if application abandoned	10
Of Invention during period of provisional protection	8
Of Complete Specification	12
PUBLIC SERVICE.	
Conditions on which Patent may be used for	23
REGISTER OF PATENT AGENTS.	
Establishment and custody of	31
RENEWAL FEES.	
Scale of, payable	18, 19
Proposed modified scale of	19
Extension of time for paying	18
REPORTS OF EXAMINERS.	
Not accessible to the public	12
Only exceptionally producible in legal proceedings	12
REVOCATION OF PATENT.	
Grounds for	23
Proceedings in relation to	23, 24
Apparent defect in act in regard to grant of Patent in lieu of Patent revoked	24

	PAGE
SEALING OF PATENT.	
Time for	16
SEARCH AS TO NOVELTY OF INVENTION.	
Advisability of making	5
Expense incidental to	6
Relative value of	6
Circumstances in which necessary to make ex- haustive	28
"SLANDER OF TITLE."	
How Patentee may become liable to action for . .	24
How Patentee may protect himself from action for .	24
SPECIFICATION.	
Provisional or complete may accompany application .	4
Provisional, must disclose the nature of the in- vention	4
Complete, must particularly describe and ascertain nature of invention	4
On being lodged, referred to Examiner	4
Acceptance of	8
When desirable to lodge Provisional, with applica- tion	10
When desirable to lodge Complete, with application	11
When desirable to delay lodging Complete . . .	11
Provisional, kept secret until Complete lodged and accepted	10
Provisional, destroyed if application not completed	10
Provisional, difficulties inherent to system . .	9
Complete, must end with distinct statement of invention claimed	4
Complete, limits of time for filing	10
Complete, limits of time for accepting	10
When printed and placed on sale	12
Sufficiency of	28
STATEMENT OF DEFENCE (<i>see</i> "Infringement").	
STATUTE OF MONOPOLIES.	
Provisions of, as to Letters Patent	1
SUBJECT MATTER (<i>see</i> "Invention, what constitutes an").	

	PAGE
SUPPLEMENTARY APPLICATION (<i>see</i> "Application").	
TERM OF PATENT.	
As fixed by Statute of Monopolies	1
May be prolonged	25
In Great Britain, suggested extension of	17
In Foreign Countries and Colonies	18
TIME FOR LODGING	
Application under Convention	26
Application by legal representative of deceased inventor	3
Complete Specification	10, 11
Notice of opposition to sealing	12
Notice of opposition to amendment	20
TREASURY	
May settle terms on which Crown may use invention	23
TREATY ARRANGEMENTS WITH GREAT BRITAIN.	
Countries having	27
UNION (<i>see</i> "International Union").	
UNITED STATES PATENT.	
Application for, must be in the name of the Inventor	3
May issue to an assignee alone	3
May issue to the inventor and an assignee jointly	3
What it may embrace	7
UTILITY.	
In what sense an invention should possess	4
Examiner not entitled to express opinion as to	4
Comptroller not entitled to reject application on the ground of want of	4
VALIDITY OF PATENT	
Not impeachable because comprising more than one invention	7
Not affected by publication during term of provisional protection	8

	PAGE
WANT OF NOVELTY	
Not necessarily a ground for opposing grant of patent	13
A ground for proceedings for revocation	13
WITNESSES.	
May be examined on oath and cross-examined in proceedings before Law Officer	13, 15
WORKING OF PATENTED INVENTION.	
Not obligatory	22



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